

# SENATE RECORD VOTE ANALYSIS

106th Congress  
1st Session

Vote No. 196

July 1, 1999, 6:01 p.m.  
Page S-8035 Temp. Record

## Y2K LAWSUIT ABUSE PROTECTIONS/Conference, Passage

**SUBJECT:** Conference report to accompany the Y2K Act . . . H.R. 775. Agreeing to the report.

### ACTION: CONFERENCE REPORT AGREED TO, 81-18

**SYNOPSIS:** The conference report to accompany H.R. 775, the Y2K Act, will enact numerous reforms to prevent abusive litigation related to year 2000 (Y2K) computer date change problems. Without enactment of this reform bill, litigation costs could reach \$1 trillion (12 percent of the entire United States' economy), potentially crippling the competitiveness of the United States' high technology industry and raising costs for consumers and for all businesses that use computers and automated systems. Details are provided below.

Definitions include the following:

- the term "Y2K action" will mean a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury resulted from a Y2K actual or potential failure or a claim or defense arises from or is related to an actual or potential Y2K failure, including a civil action commenced in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity, but not including an action brought by a governmental entity acting in a regulatory, supervisory, or enforcement capacity; and
- the term "contract" will mean a contract, tariff, license, or warranty.

Application of the Act:

- sunset: in general, Y2K actions brought after January 1, 1999 for Y2K-related harm caused before January 1, 2003, will be covered by this Act;
- no new cause of action will be created, and, except where explicitly provided in this Act, no liability will be expanded nor defense limited;
- bodily harm: the provisions of this Act will not apply to any claim for personal injury or for wrongful death;
- contract preservation: in any Y2K action any written contractual term will be strictly enforced unless such enforcement "would

(See other side)

YEAS (81)				NAYS (18)		NOT VOTING (1)	
Republican (52 or 96%)		Democrats (29 or 64%)		Republicans (2 or 4%)	Democrats (16 or 36%)	Republicans (1)	Democrats (0)
Abraham	Hatch	Baucus	Kennedy	Shelby	Akaka	Murkowski- <sup>2</sup>	
Allard	Helms	Bayh	Kerrey	Specter	Biden		
Ashcroft	Hutchinson	Bingaman	Kerry		Breaux		
Bennett	Hutchison	Boxer	Kohl		Durbin		
Bond	Inhofe	Bryan	Lautenberg		Edwards		
Brownback	Jeffords	Byrd	Lieberman		Feingold		
Bunning	Kyl	Cleland	Lincoln		Hollings		
Burns	Lott	Conrad	Mikulski		Johnson		
Campbell	Lugar	Daschle	Moynihan		Landrieu		
Chafee	Mack	Dodd	Murray		Leahy		
Cochran	McCain	Dorgan	Reed		Levin		
Collins	McConnell	Feinstein	Robb		Reid		
Coverdell	Nickles	Graham	Schumer		Rockefeller		
Craig	Roberts	Harkin	Wyden		Sarbanes		
Crapo	Roth	Inouye			Torricelli		
DeWine	Santorum				Wellstone		
Domenici	Sessions						
Enzi	Smith, Bob						
Fitzgerald	Smith, Gordon						
Frist	Snowe						
Gorton	Stevens						
Gramm	Thomas					<b>EXPLANATION OF ABSENCE:</b> 1—Official Business 2—Necessarily Absent 3—Illness 4—Other	
Grams	Thompson						
Grassley	Thurmond						
Gregg	Voinovich						
Hagel	Warner						
						<b>SYMBOLS:</b> AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay	

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

manifestly and directly contravene" applicable State statutory law addressing that term as in effect on January 1, 1999 (this section will not prevent enforcement of State law doctrines of unconscionability recognized as of January 1, 1999); for a Y2K action in which a contract is silent as to a particular issue, the interpretation of the contract will be in accordance with applicable law as it was in effect when the contract was executed;

- State law will be preempted to the extent that this Act establishes a rule of law inconsistent with State law, though nothing in this Act will affect the ability of a State to defend itself against a claim on the basis of sovereign immunity;
- nothing in this Act will supersede any provision of the Year 2000 Information Readiness Disclosure Act;
- defendants who violate a Federal rule or requirement after a Y2K failure in order to protect health or safety will be given a temporary safe harbor from penalties; in general, consumers will be given temporary protection from residential foreclosures based on the failure of or improper recording of a transaction due to a Y2K failure; and
- only the bystander liability protections of this Act will apply to Y2K actions in which the underlying claim arises under the securities laws.

Punitive damage limitations:

- in general, in any Y2K action in which punitive damages are permitted, they will not be awarded unless the plaintiff proves by "clear and convincing evidence that the applicable standard for awarding damages has been met";
- a defendant who is sued as an individual and has a net worth of \$500,000 or less, and a business with fewer than 50 full-time employees, will not be assessed punitive damages in excess of the lesser of 3 times compensatory damages or \$250,000; this cap will not apply if a plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff; and
- punitive damages in a Y2K action will not be awarded against a governmental entity.

Proportionate liability:

- in general, a defendant will only be liable for the percentage of a judgment that is equal to the percentage of the fault that defendant bears for the loss incurred (for instance, a defendant who bears 1 percent of the fault will pay 1 percent of the judgment); in determining the percentage of fault of any defendant, the trier of fact will determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the loss;
- if a trier of fact specifically determines that a defendant either acted with specific intent to injure the plaintiff or knowingly committed fraud, then that defendant will bear joint and several liability rather than proportionate liability; for purposes of this determination, reckless conduct will not constitute a specific intent to injure or the knowing commission of fraud;
- for a plaintiff with a net worth of less than \$200,000 who has uncollectible damages of 10 percent or more of his or her net worth from a defendant, other defendants will be jointly and severally liable; for any other plaintiff who has uncollectible damages from a defendant, other defendants will be jointly and severally liable to pay additional damages of up to 100 percent of their proportional liability, or up to 150 percent of their proportional liability if the plaintiff can show that they acted with recklessness; and
- nothing in these proportionate liability provisions will preempt State laws that afford defendants greater protection from joint or several liability or otherwise limit the liability of defendants more than this Act's proportionate liability provisions will.

Pre-litigation notice:

- except for an action seeking injunctive relief, any prospective plaintiff with a Y2K claim will have to send written notice by certified mail to each prospective defendant; that notice will have to contain certain specific and detailed information;
- each prospective defendant will have to respond by certified mail to a notice within 30 days; in that response, it will have to acknowledge receipt of the notice and describe the actions it has taken or will take to address the problem stated by the prospective plaintiff; the response will state whether the prospective defendant is willing to use alternative dispute resolution (ADR) procedures; responses will not be admissible as evidence in subsequent proceedings; and
- if a prospective defendant does not respond within 30 days or describe the actions it has taken or will take to address the stated problem, a prospective plaintiff may immediately commence a legal action; otherwise, a prospective defendant will have a 60-day remediation period following the 30-day notice period in which to complete its proposed remedial action; no legal action will be taken during that remediation period; that 60-day period may be extended by written agreement between the prospective defendant and prospective plaintiff; any applicable statute of limitations or doctrine of laches will be "tolled" (time will not be counted) during notice and remediation periods.

Pleading requirements:

- in all Y2K actions in which damages are requested, there will be filed with the complaint a statement that contains "specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation";
- in any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there will be filed with the complaint a statement "of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material"; and
- in any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with

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a particular state of mind, there will be filed with the complaint with respect to each element of that claim a statement "of the facts giving rise to a strong inference that the defendant acted with the required state of mind."

Duty to mitigate:

- except in cases of intentional fraud, compensatory damages will be reduced by the amount they could reasonably have been

technology companies, result in much higher prices for consumers, and force companies to spend their resources for years or even decades defending themselves against predatory lawsuits instead of creating new and better products. In all of our years in Congress, none of us have ever seen any bill garner as broad and as huge support as this bill has. The Year 2000 Coalition represents groups and businesses that are likely to be plaintiffs in Y2K suits, that are likely to be defendants, and that are likely to be both. Altogether, those diverse groups and businesses are responsible for 70 percent of this country's annual economic output. They do not want to go to court. They just want their computers to work.

This bill will prevent abusive lawsuits. It will encourage cooperation and swift remediation of any problems instead of lengthy and expensive court cases from which only lawyers really benefit. We are pleased that Members on both sides have been willing to compromise and that the White House has been willing to compromise. As a result, this much needed bill will be enacted into law.

**Those opposing** passage contended:

This conference report is worse than the bill that passed the Senate. We were not involved in the negotiations, though some of us were conferees. Instead, a few supporters of this bill just negotiated with the White House. In the end, they got the White House to capitulate because the Vice President dearly wants to get campaign cash from the high-tech industry, and the high-tech industry dearly wants this bill to pass to give them unwarranted, unprecedented protection from liability for the harm their products may cause due to Y2K failures.